HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1757 of 2001 (S/S)
Mangal Singh Thapa and others
Vs
Union of India and others.

Approved for reporting.

~~Not approved for reporting~~

Date of decision 09.08.2005.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 1757 of 2001(SS)
(Old No. 35262 of 1998)

1. Mangal Singh Thapa
2. Deepak Joshi
3. Sanjay Rastogi
4. Virendra Singh Negi
5. Rajesh Kumar
6. Trilok Singh Panwar
7. Dharam Pal Singh
8. Satender Kumar
9. Rakesh Kumar
10. Gangi lal
11. Bal Krishan Sharma
12. Shyam Lal
13. Khem Bahadur Thapa
14. Prabhat Tamang
15. Ram Naresh
16. Arun Kumar Kharola
17. Man Singh Thapa
18. Sanjay Bhandari
19. Virender Rawat
20. Manoj Kumar
21. Shiv Kumar Thapa
22. Hemant Kumakr hapa
23. Ravinder Dutt
24. Sanjay Kumar
25. Rajender Singh Negi
26. Mandan Singh ..... Petitioners

Versus

1. Union of India
2. Oil and Natural Gas Corporation Ltd;
3. Director (Personnel) O.N.G.C.
   Tel Bhawan, Dehradun
4. M/S Mec Engineers, Ghaziabad
5. M/S Vinoka Refrigerations & Electricals
6. M/S Gulati Enterprizes, Dehradun

7. M/S Jai Engineers. Dehradun ..... Respondents

Mr. Rajendra Dobhal, Advocate for the petitioners.
Mr. L.P. Naithani, Sr. Advocate for the respondents.

Dated: 9.8.2005

Hon'ble Rajesh Tandon J.

By the present writ petition, the petitioners have prayed for a writ of mandamus directing the respondents to enforce the notification dated 8.9.1994 and to absorb the services of the petitioners and treat them as regular employees in the establishment of the respondent Oil and Natural Gas Commission.

Briefly stated the petitioners are employees of Oil & Natural Gas Commission, Dehradun and have been working as Technician cum operator in K.D.M.I.P.C. Central Air Conditioning Plant and pump house. The petitioners no. 1 to 6 are working as contract labour of the respondent no. 4 and petitioner no. 8,9, 12, 15, 16 and 19 to 26 are the contract labourers of respondent no. 5. The petitioner No. 7, 10k and 18 are the contract labour of the respondent no. 6 and the petitioner in no. 11, 13, 14 and 17 are the contract labour of the respondent no. 7. The petitioners are being paid a fixed amount of Rs.1800/- to Rs.2500.

The petitioners have submitted that Union of India issued a notification dated 8.9.1994 prohibiting employment of contract labour for various work under few categories. The petitioners belong to category no. 11 mentioned in the schedule of the notification. The petitioners have been working as Technician cum Operator in K.D.M.I.P.C. under the contract

labour system through their contractors respondents no. 4 to 7. There is no job security of the petitioners nor there is any future prospects in the services of the petitioners. Inspite of the notification dated 8.9.1994 the respondents have not abolished the contract labour system in category no. 11 as mentioned in the schedule in the said notification. The notification reads as under:

GOVERNMENT OF INDIA/BHARAT SARKAR

MINISTKRY OF LABOUR/SHARM MANTRALYA

Jaisalmer House, Mansingh Road, New Delhi
The 8th Sept. 1994

NOTIFICATION

No.S.O. In exercise of the powers conferred by sub section (1) of section 10 of the contract Labour (Regulation and Abolition) Act, 1970 (37 of 1970), the Central Government, after consultation with the Central Advisory Contract Labour Board, hereby prohibits the employment of contract labour in various works specified in the schedule annexed hereto, in the establishments of the Oil and Natural Gas Commission in the country.

Schedule

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11. Instrumentation Technician & Helpers.

S.S. Sharma

Director General (Labour Welfare)
Joint Secretary to the Government of India

Supplementary affidavit has been filed by the petitioners in which it has been stated that petitioner no. 21, 22, 23, 24, 25

and 26 are still working as contract labour under M/S Vinoka Refrigeration and Electricals in the Office of respondent no. 2 and 3.

The counsel for the respondents has referred the judgment of the Apex Court in Steel Authority of India Ltd. vs. National Union Water Front Workers AIR 2001 SC 3527, wherein it has been observed that since the judgment in the case in the case of Air India Statutory Corpn. V. United Labour Union, 1977 AIR SCW 430 has been over ruled. The Apex Court has held as under:

"The order under challenge in this appeal is the judgment of a Division Bench of the High Court of Bombay in WP No. 4050 of 1999 dated 2-8-2000. On the ground that the members of respondent Union (employees of ONGC) are covered by the notification issued by the Central Government on 9-12-1976, the High Court ordered absorption of the workers employed as contract labour. Inasmuch as the Central Government Became the appropriate Government, for an establishment of ONGC after the amended definition of the appropriate Government came into force under the CLRA Act w.e.f. 28-1-1986 whereunder the definition of the said expression under the Industrial Disputes Act is adopted in the CLRA Act, therefore, the Central Government will be the appropriate Government for ONGC w.e.f. 28-1-1986. It follows that the notification issued on 9-12-976 would not cover the establishments of the appellant. However, as the High Court directed absorption of the contract labour in the establishments of the appellant following the judgment of this Court in Air India case[2] and that judgment has since been overruled, both on the question of appropriate Government as well as on the point of automatic

absorption, we set aside the order under challenge and accordingly allow this appeal."

In the case Nitinkumar Nathalal Joshi vs. Oil and Natural Gas Corpn. Ltd. (2002) 3 SCC 433 the Apex Court after relying upon the judgment in Steel Authority of India (supra) has held as under:

"In the present case, the appellants have alleged that after the filing of the said appeal, the contract between the first respondent ONGC Limited and the second respondent Ahmedabad Electricity Co. Limited came to an end on 30-11-2000 for operation of boilers and the first respondent ONGC Limited entered into a contract with M/s S.S. Construction, Mumbai and M/s Essel Engineering Services, Mumbai for operation of the boilers at ONGC Limited with effect from 1-12-2000. They have also alleged that some of the appellants were given employment with a lesser payment but these facts have been denied by the first respondent. As these are disputed questions of fact, we do not propose to go into these questions and do not interfere with the directions given in the impugned judgment. However, we make it clear that the Industrial Tribunal/Labour Court shall also consider these allegations and shall give appropriate direction. We may also emphasise that the Constitution Bench of this Court in Steel Authority of India Ltd. case[1] in paragraph 107 observed as under: (SCC p. 56)

> *"107. An analysis of the cases, discussed above, shows that they fall in three classes: (i) where contract labour is engaged in or in connection with the work of an establishment and employment of contract labour is*

prohibited either because the industrial adjudicator/court ordered abolition of contract labour or because the appropriate government issued notification under Section 10(1) of the CLRA Act, no automatic absorption of the contract labour working in the establishment was ordered; (ii) where the contract was found to be a sham and nominal, rather a camouflage, in which case the contract labour working in the establishment of the principal employer were held, in fact and in reality, the employees of the principal employer himself. Indeed, such cases do not relate to abolition of contract labour but present instances wherein the Court pierced the veil and declared the correct position as a fact at the stage after employment of contract labour stood prohibited; (iii)where in discharge of a statutory obligation of maintaining a canteen in an establishment the principal employer availed the services of a contractor the courts have held that the contract labour would indeed be the employees of the principal employer."

Further observation has been made by the Apex Court in the case of Steel Authority of India. In paragraph 122 the Apex Court has observed as under:

(5) On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for

work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6) If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued b y the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualification other than technical qualifications.

The petitioners filed supplementary affidavit and have stated that petitioner No. 1, 5, 6, 7, 8, 9, 11, 12, 15, 16, 18, 19, 21, 22, 23, 24, and 26 are still continuing in service as Contract Laborers in Oil and Natural Gas Corporation, Dehradun. Petitioner no. 13, 14 and 17 had been continuing in Oil &

Natural Gas Corporation, Dehradun since the date of their engagement up- to 7.7.2005 as contract labourers through their contractor M/S Voltas Ltd. Their contract came to an end on 7.7.2005 and, therefore, the respondent has not renewed the contract of petitioners no. 13, 14 and 17 so far. The petitioners have further submitted that the work of the petitioners are technical in nature, which continues throughout the year and as such perennial in nature but despite of this fact, the petitioners are not being regularized by the respondent considering their long service and perennial nature of work.

However, respondents are directed to give preference to the petitioners for regular employment in accordance with the observations made by the Apex Court in paragraph 22 in the case of Steel Authority of India (supra). The petitioners are directed to represent the authorities concerned.

In view of the aforesaid preposition of law the petitioners have alternative remedy to approach Industrial Tribunal/Labour Court to get the dispute adjudicated. It is expected that the Central Government shall refer the dispute to the appropriate authority for adjudication within four months.

Subject to the aforesaid observations, the writ petition is dismissed on the ground of alternative remedy. No order as to costs.

9.8.2005 **(Rajesh Tandon J.)**

*Dhyani